the various circumstances to which they spoke pointed irresistibly in one direction and one direction only, that direction being the guilt of the prisoner. The evidence was discussed at great length and with substantial accuracy by the trial Judge in his charge. We ourselves have read the evidence. We have read it with care and we have come to the conclusion that we can say that had the jury been properly directed they would, and here I return to quote the words of Lord Sankey, "have inevitably come to the same conclusion" that is that the prisoner was guilty of both the murders for which he was tried.

We are accordingly satisfied that the case is one which comes within the scope of the proviso to section 29(1) of the Courts Ordinance and we dismiss the appeals.

Appeal dismissed.

GURUBACHAN SINGH v. SEAGROTT & CAMPBELL

[C.A. (Hill Ag. C.J., Good J.A. and Ong J.) June 12, 1962]

[K.L. — F.M. Civil Appeal No. 16 of 1962]

Appeal — Application to stay until payment of judgment debt and costs — Further security for costs — Insolvency of appellant.

Practice and Procedure — Appeal to Court of Appeal — R.S.C., O.58 rr.15(2) and 21(1) — Difference between English and local procedure.

Costs — Further security — Insolvency of appellant — Act of bankruptcy founded on appellant's failure to satisfy judgment debt.

In this case the appellant was dissatisfied with a judgment of the High Court and wished to appeal. He complied with the Rules, and deposited $500 towards the costs of the appeal. The respondent applied by motion to the Court of Appeal that the appeal be stayed until payment of the judgment debt and costs and that the appellant gives further security for costs. The only ground put forward in the affidavit in support of the motion was that of the appellant's insolvency.

Held: the test would be whether the appeal and the conduct of the appellant are reasonable or not. In this case there was nothing unusual or unreasonable and therefore there was no justification for the Court to grant the application.

Per Good J.A.: "That difference in procedure (between English and local rules) seems to me to make all English authorities that have been cited to us on the second limb of the application totally irrelevant and I do not see any reason for exercising the discretion which is given to us by O.58 r.15(2) to order further security for costs to be given."

Per Ong J.: "the act of bankruptcy in this case is founded on the appellant's failure to comply with a bankruptcy notice requiring him to satisfy the amount of the judgment debt which is the subject matter of the appeal. The judgment debt vanishes in the event of the appellant succeeding in his appeal and any assumption to the contrary is unwarranted. Therefore the applicant has to show that the appellant was doing something more than he was justly entitled to do and that he was doing it needlessly to throw additional costs upon the shoulders of the respondent before he can ask for further security and a stay of the appeal."

COURT OF APPEAL.

Dato R. P. S. Rajasooria for the appellant.

A. L. Hills for the respondent.

Hill Ag. C.J. (delivering oral judgment): This is an application by the respondent in Civil Appeal No: 16 of 1962 that the appeal be stayed until payment of the judgment debt and costs and that the appellant gives further security for the costs of the appeal. For myself and speaking very briefly the test would seem to be whether the appeal and the conduct of the appellant are unreasonable or not.

No deposit for security of costs is required on lodging an appeal in England. In this case the appellant is dissatisfied with a judgment of the High Court and wishes to appeal. He has complied with the rules, he has done nothing that is barred by them and he has deposited $500 towards the costs of the appeal.

Speaking for myself, I see nothing unusual or unreasonable in this and nothing that would justify this Court in granting the application.

I would dismiss the application with costs.

Good J.A. (delivering oral judgment): I agree and will state my reasons very briefly.

In the English practice, Order 58 rule 9(5):

"The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just."

In the Federation of Malaya Order 58 rule 21(1) there is an obligation placed upon the appellant to deposit $500 as security for costs at the time that he files his notice of appeal. That difference in procedure seems to me to make all the English authorities that have been cited to us on the second limb of the application totally irrelevant and I have been unable to see any reason for exercising the discretion which is given to us by Order 58 rule 15(2) to order further security for costs to be given. There is nothing extraordinary or abnormal in the case that I can see which would justify us in going outside the limits of the ordinary procedure which have been complied with by the appellant. So far as the first limb of the application goes, that is the prayer that the appeal be stayed until the amount of judgment debt and costs already incurred in the Court below have been paid, Mr. Hills has not provided us with any authority demonstrating that we have any power to do that; and speaking for myself I see no justification for seeking to assume such a power.

I therefore would dismiss the application with costs.

Ong J. (delivering oral judgment): I have for my own part a few words to add to what my Lords have said.

I notice that in the affidavit in support of the motion there was nothing said which suggests in any way that the appeal is unreasonable or frivolous or vexatious. The effect of granting this application would be to shut the appellant from his rights to be heard in the Court of Appeal and the only ground that has been put forward in the affidavit is that of his insolvency.

Now the act of bankruptcy in this case is founded on the appellant's failure to comply with a bankruptcy notice requiring him to satisfy the amount of the judgment debt which is the subject matter of this appeal. The judgment debt vanishes in the event of the appellant succeeding in his appeal and any assumption to the contrary is unwarranted. Therefore the applicant (the respondent in this appeal) has to show that the appellant was doing something more than he was justly entitled to do and that he was doing it needlessly to throw additional costs upon the shoulders of the respondent before he can ask for further security and a stay of the appeal.

I would dismiss this application with costs.

Application dismissed.

Solicitors: *Dato R. P. S. Rajasooria*; *Donaldson & Burkinshaw.*

Re TAN KHENG CHENG

[R. Cr. J. (Adams J.) July 7, 1962]

[J.B. — Criminal Revision No. 8 of 1962]

Road Traffic Ordinance, 1958 — Accused, a paid driver, charged under ss.98(1) and 74 — Employer similarly charged in different court and on different date and convicted — Observations on desirability of a joint trial — Evidence — When s.106, Evidence Ordinance, 1950, may be invoked.

In a charge under section 74 of the Road Traffic Ordinance, 1958, although the fact that the vehicle is insured is in the knowledge of the owner of the vehicle or his paid employee and therefore section 106 of the Evidence Ordinance applies, this situation arises only where the prosecution have first made out a case which, if unrebutted, would entitle the court to convict. If at the end of the prosecution case there is no evidence upon which a court could find that a case which if unrebutted would entitle it to convict, the court should not call upon the defence.

Per Curiam: It is highly desirable that in respect of offences under the Road Traffic Ordinance, 1958, that:

(1) where police are proceeding against both the owner and the driver of the vehicle, the two should be tried together. This would greatly assist the court and also ensure better dispensation of justice;

(2) where the charge is under section 74, for magistrates to ask to see both the certificate of insurance and the policy if they call on the defence;

(3) prosecutions are not left in the hands of very junior and apparently inexperienced police officers. Road traffic cases are important cases. Road discipline and the observance of the law contained in the Road Traffic Ordinance are necessary for the protection of the public from maiming or worse.

CRIMINAL REVISION.

Adams J.: The petitioner in this matter, one Tan Kheng Cheng, was charged before the learned Magistrate, Johore Bahru, with two offences relating to the use of his employer's motor car SB 1857, namely using it for the carriage of goods without a haulage permit contrary to section 98(1) of the Road Traffic Ordinance, 1958, and driving the vehicle without there being in force a valid certificate of insurance contrary to section 74 of the same Ordinance.

I sent for the record and found that it was manifestly irregular on the face of it. For that reason, and that reason only I decided that in the interests of justice I should act by way of revision although the petitioner had had in fact a right of appeal which he failed to exercise.

The facts are as follows. The petitioner is a paid driver and was at the time of the commission of the offence employed by Ang Kim Cheo of 57 Pheng Gek Avenue, Singapore. The vehicle was stopped in Jalan Scudai, Johore Bahru, while the petitioner was driving it and there was found in the vehicle a large quantity of hardware. He was duly charged.

Apparently his employer was also charged, but in another case and on another day and before another magistrate. He was very properly fined $100 on each charge and disqualified from obtaining a driving licence for 12 months. But I would again repeat what I have said many times before that in cases of this nature it is usually better to have the owner and the driver tried together. It would have been a great help to the learned magistrate in the case under review since the driver's excuse was that he was carrying these goods on the orders of his employer. The employer no doubt would have confirmed that. That might very well be considered as a reason 'special to the offence' which might have seemed sufficient to the learned magistrate not to disqualify the driver, the present petitioner, under the mandatory statutory provisions of section 74.

But from the record, the conviction on the second charge cannot stand. At no place in the evidence do the prosecution aver that the vehicle was not insured or that there was not in force a valid certificate of insurance as required by section 74. Although the fact that the vehicle is insured is in the knowledge of the defendant or his employer and therefore section 106 of the Evidence Ordinance applies and, once a *prima facie* case has been made out, it is for the defence to show that he was properly insured, the prosecution must make out a case which, if unrebutted would entitle the court to convict before it can call on the defence. The police must adduce evidence to say that they asked the defendant for his certificate of insurance and that he was unable to produce it or that having asked him for it and inspected it, they found that it did not cover the use for which the vehicle was being put at the time that it was stopped. This, I may say, is most important. I strongly advise magistrates to ask to see both the certificate of insurance and the Policy if they do call on the defence. They may very well find that the policy in fact covers the use of the vehicle.

There was not, therefore, at the end of the case for the prosecution any evidence at all upon which the magistrate could find that a case which if unrebutted would have entitled him to convict the defendant on the second charge, and he should not have called upon the defence.